

Appeal No. 16-56307

**IN THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

Bradley Berentson, et al.

Plaintiffs-Appellees

Brian Perryman,

Objector-Appellant

v.

Provide Commerce, Inc., et al.

Defendants-Appellees

On Appeal from the United States District Court
for the Southern District of California, No. 3:09-cv-2094 BAS-WVG

**REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF OF
AMICI CURIAE IN SUPPORT OF NEITHER PARTY ON BEHALF OF**

**NATIONAL LEGAL AID AND DEFENDER ASSOCIATION,
ASSOCIATION OF PRO BONO COUNSEL, LEGAL AID ASSOCIATION
OF CALIFORNIA AND TWENTY-FOUR OF ITS MEMBER
ORGANIZATIONS, CALIFORNIA BAR FOUNDATION, EQUAL RIGHTS
ADVOCATES, FAMILY AND CHILDREN'S LAW CENTER, COLUMBIA
LEGAL SERVICES, HAWAII JUSTICE FOUNDATION, LEGAL AID
CENTER OF SOUTHERN NEVADA, MONTANA JUSTICE
FOUNDATION, NORTHWEST IMMIGRANT RIGHTS PROJECT,
WASHOE LEGAL SERVICES, AND WILLIAM E. MORRIS INSTITUTE
FOR JUSTICE**

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REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE

BRIEF OF *AMICI CURIAE*

The National Legal Aid and Defenders Association, the Association of Pro Bono Counsel, the Legal Aid Association of California (LAAC) and twenty-four LAAC member organizations, and ten other legal services organizations and bar associations located in the Ninth Circuit (“Proposed Amici *Curiae*”) have filed a motion for leave to file an amicus brief in this appeal. The response by the objector-appellant’s counsel is a mélange of misstatements and omissions that warrants a short reply in support of the motion under Rule 27(a)(4) of the Federal Rules of Appellate Procedure.

Much of the response is sweeping arguments that objector-appellant’s counsel is right about the law related to cy pres awards and our proposed amicus brief is wrong. Proposed Amici *Curiae* do not address those arguments on the merits in this reply.

As to the timing of our filing, objector-appellant’s response claims that Proposed Amici *Curiae* offered “no explanation” for filing their motion and proposed amicus brief after appellant’s opening brief. Not so; the motion says clearly that the organizations joining in the amicus brief were not aware of this appeal until after the opening appeal brief was filed.

More importantly, although objector-appellant has taken the time to file an opposition to our motion, objector-appellant has identified no credible basis for his assertion that he will be prejudiced by the filing of our proposed amicus brief. Instead, objector-appellant makes up a supposed problem about other parties to this appeal opposing our proposed brief. In reality (and as our motion states), class counsel for plaintiffs-appellees consented to our filing and will not be filing any response to our brief, while the active defendant-appellee Provide Commerce, Inc. did not object to our filing. Appellee Regent Group, Inc. has not filed an appeal brief and has filed instead a Rule 28(j) joinder in the brief that Provide Commerce filed on the same day as Proposed Amici *Curiae*'s filing. In short, the proposed amicus brief was filed with our motion on the same day as the appellee briefs and will not trigger a cascade of additional briefs by anyone other than the objector-appellant.

Finally, the arguments about supposed "prejudice" to objector-appellant Perryman because of our proposed amicus brief ignore two points. First, this class action was settled by the parties in 2012 and has been prolonged since then by repeated objections on behalf of Mr. Perryman and two appeals by objector-appellant's counsel - Theodore Frank and his "Center For Class Action Fairness", a well-funded opponent of class actions generally and class action settlements in particular. Second, Mr. Frank's summer schedule is a function of his penchant for

filing settlement objections as a vehicle for filing appeals challenging various aspects of class action settlements around the country.

Proposed Amici *Curiae* respectfully urge the Court to grant their motion for leave to file an amicus brief to give the Court the perspective of leading legal service organizations and bar associations on the important issue of cy pres awards in class action settlements.

Respectfully submitted,

Dated: July 7, 2017

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9th Circuit Case Number(s)

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